

MDR Tracking Number: M5-04-2840-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution - General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on 5-3-03.

Dates of service 9-9-04 through 9-19-04 have been withdrawn by the requestor in a letter dated 11-16-04.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was the only issue** to be resolved. The Physical Performance Test and Work-Hardening Program from 9-9-03 through 10-8-03 were found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

This Finding and Decision is hereby issued this 17<sup>th</sup> day of November, 2004.

Donna Auby  
Medical Dispute Resolution Officer  
Medical Review Division

Pursuant to 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees in accordance with Medicare program reimbursement methodologies for dates of service after August 1, 2003 per Commission Rule 134.202(c); in accordance with Medicare program reimbursement methodologies for dates of service after August 1, 2003 per Commission Rule 134.202(c)(6); **plus all accrued interest** due at the time of payment to the requestor within 20 days of receipt of this order and in accordance with TWCC reimbursement methodologies for Return to Work Rehabilitation Programs for dates of service after August 1, 2003 per Commission Rule 134.202(e)(5). This Decision is applicable for dates of service 9-22-03 through 10-8-03 as outlined above in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 17<sup>th</sup> day of November 2004.

Roy Lewis, Supervisor  
Medical Dispute Resolution  
Medical Review Division

Enclosure: IRO decision

## NOTICE OF INDEPENDENT REVIEW DECISION—AMENDED DECISION

**Date:** September 15, 2004

**RE:**

**MDR Tracking #:** M5-04-2840-01

**IRO Certificate #:** 5242

\_\_\_\_\_ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to \_\_\_\_\_ for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

\_\_\_\_\_ has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

### **Submitted by Requester:**

- MDR Request dated 3/17/04 from \_\_\_\_\_.
- Letter of Medical Necessity dated 12/5/03 from \_\_\_\_\_.
- Health Insurance Claim Forms dated 9/9/03-10/8/03 from \_\_\_\_\_.
- Explanation of Review for dates of service 9/5/03-10/8/03 from \_\_\_\_\_.
- \_\_\_\_\_ WC/WH Program Daily Notes with Psychology Group Notes 9/19/03-10/8/03 from \_\_\_\_\_.
- \_\_\_\_\_ Consultation Examination and Impairment Rating dated 10/16/03 from \_\_\_\_\_.
- Case Management Note Addendum dated 10/14/03
- Job Description Request dated 9/9/03
- \_\_\_\_\_ Lifting Capacity Report
- \_\_\_\_\_ Patient Release Worksheet dated 10/8/03
- Initial Functional Capacity Evaluation (FCE) dated 8/9/03 from \_\_\_\_\_.
- Interim FCE Report dated 10/8/03 from \_\_\_\_\_.
- Clinical Rehabilitation Psychology Evaluation dated 9/9/03
- \_\_\_\_\_ Work Program with Patient Rights and Responsibilities, Program Policies, Patient Orientation and Education Checklist and Patient Resource List dated 9/15/03
- Initial FCE dated 9/9/03

- Stress and Lifestyle Change dated 9/9/03
- \_\_\_\_\_ Comprehensive Patient Examination dated 8/20/03
- \_\_\_\_\_ Patient Status Report dated 8/20/03
- \_\_\_\_\_ Work Program Participant Intake Sheet
- \_\_\_\_\_ Prescription dates 8/19/03-10/15/03
- Initial Report dated 7/16/03 from \_\_\_\_\_.
- Radiographic Report dated 7/11/03 from \_\_\_\_\_
- MRI Report of the lumbar spine dated 7/16/03 from \_\_\_\_\_
- Medical Evaluation dated 7/14/03 from \_\_\_\_\_.
- Daily Notes from \_\_\_\_\_ dates \_\_\_\_-8/22/03

**Submitted by Respondent:**

- Medical Dispute Resolution Request/Response dated 5/6/04
- Table of Disputed Services
- Daily Notes from \_\_\_\_\_ dates 1/24/04-5/27/04
- Individual Counseling Session from \_\_\_\_\_ dated 4/29/04
- Health and Behavior Intervention dated 4/29/04
- Psychophysiological Therapy dated 4/22/04
- Behavior Medicine Evaluation dated 3/4/04 from \_\_\_\_\_
- Diagnostic Ultrasound dated 1/26/04 and 2/18/04 from \_\_\_\_\_
- Myotome Test from \_\_\_\_\_
- Physical Demand Strength Rating Report dates 1/22/04, 1/23/04, 1/24/04, 1/26/04
- Nerve Conduction Studies dated 1/20/04 from Neuro-Selective CPT Laboratory Report
- Accudexa Bone Densitometry Report dated 1/20/04
- Impairment Rating dated 10/16/03 from \_\_\_\_\_
- \_\_\_\_\_ WC/WH Program Daily Notes dates 8/20/03-10/8/03
- Interim FCE dated 10/8/03
- Medical Consultation dated 7/14/03 from \_\_\_\_\_

**Clinical History**

I have had the opportunity to review the medical records in the above-mentioned case for the purpose of an Independent Review. The claimant is a 20 year-old female who injured her low back when she slipped and fell while at work for \_\_\_\_\_. The claimant was initially treated by \_\_\_\_\_ with chiropractic treatment and various physiotherapy modalities for an apparent lumbar sprain/strain. The claimant had a MRI of the lumbar spine on 7/16/03 at \_\_\_\_\_, which revealed a Grade I spondylolisthesis at L5/S1 with a 3 mm anterior subluxation of the L5 in the supine position. The claimant participated in the work-hardening/conditioning program with \_\_\_\_\_ and was determined at maximum medical improvement on 10/16/03 with 5% whole person impairment.

**Requested Service(s)**

Physical Performance Test, Work-Hardening with each additional hour for dates of service 9/9/03-10/8/03.

**Decision**

I disagree with the insurance carrier and find that physical performance test, work hardening program and each additional hour for this claimant is necessary based on the initial Functional Capacity Evaluation report dated 9/9/03 and the interim Functional Capacity Evaluation report of 10/8/03.

**Rationale/Basis for Decision**

The claimant suffered a soft tissue injury to the lumbar spine as a result of the compensable injury of \_\_\_\_\_. The claimant performed at a light physical demand level during the initial FCE of 9/9/03 and her job as a deli clerk requires her to function at a medium physical demand level. Therefore, 4 weeks of work-hardening program is reasonable and necessary for the claimant to return to her job as a deli clerk. The interim FCE report of 10/8/03 was reasonable and necessary to determine if the claimant was able to return to work at medium physical demand level.

The opinions rendered in this case are the opinions of this evaluator. This evaluation has been conducted on the basis of the medical documentation as provided, with the assumption that the material is true and correct. If more information becomes available at a later date, an additional service/report/reconsideration may be requested. Such information may or may not change the opinions rendered in the evaluation. This opinion is based on documentation. This opinion does not constitute per se a recommendation for specific claims or administrative functions to be made or enforced. The opinions are based upon reasonable medical probability.

Medicine is both an art and a science, and although an evaluatee may appear to be fit for return to duty, there is no guarantee that the evaluatee will not be re-injured or suffer additional injury once he/she returns to work.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to the patient, the requestor, the insurance carrier, and TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 15<sup>th</sup> day of September 2004.